



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1996

Mr. Richard J. Ybarra
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-1066

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100033.

The Elder Law and Public Health Division of the Attorney General's Office (the "division") received a request for "a copy of the settlement in Cause #96-01574 as soon as it is filed." You state that the requested information is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code. You have submitted the requested information to this office for review.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open*

Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the division remains in pending litigation, *State v. Leatherwood*, No. 96-01574 (53rd Dist. Ct., Travis County, Tex.), and no settlement or judgment is final. You state that settlement negotiations continue. After reviewing the submitted materials, we conclude that litigation is pending and that the documents relate to settlement negotiations. You may, therefore, withhold the requested material pursuant to section 552.103.

We note, however, that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100033

Enclosures: Submitted documents

cc: Ms. Elaine Nail
5426 80th Street
Lubbock, Texas 79424
(w/o enclosures)